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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Federal Communications Commission
Office of Secretary

In the matter of

WT Docket No. 94-147

JAMES A. KAY, JR.

Licensee of one hundred fifty-
two Part 90 licenses in the
Los Angeles, California area.

To: The Hon. Richard L. Sippel

STATUS REPORT

James A. Kay, Jr. ("Kay"), by and through his attorneys, submits this Status Report pursuant to the Presiding Judge's Order, FCC 97M-32, released March 3, 1997 (hereinafter, the "Order").

I. Preliminary Statement

Pursuant to the Order, counsel for the Wireless Telecommunications Bureau ("Bureau") and Kay met in the Bureau's offices on March 13, 1997, wherein the parties discussed the subjects contained in the Order.

Since discovery was formally suspended over fourteen months ago (See, Order, FCC 96M-1, released January 18, 1996), little has changed since Kay filed his Statement of Readiness for Hearing on October 23, 1995.

II. Possible Motions

Based on the language contained in the Order concerning end-user information, Kay also anticipates that the Bureau will again seek information regarding Kay's "end-users" which, as stated in numerous previous pleadings, has already been supplied, to the extent that it exists.

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Kay desires additional documents from the Bureau and deems the receipt of such documents, prior to commencing further discovery, as essential. Kay currently has a Freedom of Information Act appeal pending before the United States District Court for the District of Columbia. To the extent that the District Court does not consider the issue in the near future, however, Kay is at a tremendous disadvantage and, if necessary, will seek appropriate relief from the Presiding Officer.

Kay reserves the right to file such other motions, including requests for additional discovery from the Bureau and matters related to the conduct of the hearing, as are deemed proper. Kay does not have specific dates on the filing of these motions, but will do so promptly.

III. Discovery

To date, the primary discovery that Kay has received from the Bureau has come from the Bureau's Responses to Kay's First Set of Interrogatories. Since the Bureau has not provided Kay with additional information, Kay will need to depose each of the Commission's witnesses after they are formally identified, commencing in May of 1997. At this time, Kay estimates that this will lead to a preliminary round of at least 30 depositions in the Los Angeles, California area and perhaps elsewhere. Depending on the results of the preliminary round, Kay will need a second round of depositions. Given the large number of witnesses expected to be deposed by both Kay and the Bureau, Kay believes that discovery can be completed in approximately four to

five months. In accordance with the Order, counsel discussed setting mutually agreeable dates and times (for both Kay's counsel, Bureau counsel and the deponents) for depositions in Los Angeles to avoid multiple trips to California. The parties intend to submit a proposed Joint Deposition Schedule on or before April 2, 1997.¹

IV. Possible Stipulations

The parties discussed submitting a list of stipulated facts, but concurred that they would be unable to do so before the completion of discovery. The parties expect to be able to stipulate to uncontested factual matters (e.g., the licenses held by Kay).

V. Evidence and Witnesses

In his Statement of Readiness for Hearing, filed on October 23, 1995, Kay submitted a preliminary list of witnesses and a brief characterization of their testimony. The previously submitted list of witnesses is only a preliminary list, owing to the limited discovery that has taken place, the Bureau not having formally presented its preliminary witness list,² and Kay has yet

¹ Kay will provide a log of privileged documents as soon as he is advised as to any privileged documents the Bureau seeks.

² During the March 13, 1997 meeting of counsel, the Bureau indicated that, at this time, it does not intend to call witnesses in addition to those identified in its answers to interrogatories. The witnesses identified by the Bureau in its answers to interrogatories is incomplete, however, because, on many occasions, the Bureau merely identified companies and not specific agents or employees of such companies. Therefore, Kay requests that the Bureau be required to immediately produce a preliminary witness list, containing individual names, in much the manner that Kay did in October, 1995.

to receive additional evidence from the Bureau concerning the case it intends to present against Kay. Depending on the testimony that the Bureau will offer, Kay reserves the right to supplement his witness list as necessary.

During the March 13, 1997 meeting among counsel, counsel tentatively identified the following hearing dates: November 17-21, 1997 in Washington and December 1-12 in Los Angeles, with admissions sessions at the beginning of these dates.³ However, after reviewing the possible list of witnesses and examining the Court's previous orders concerning the Bureau's burden of proof, counsel for Kay does not believe that a hearing in Washington is necessary and, if it is, the Washington phase of the hearing must be held after the Bureau presents its case-in-chief in Los Angeles. Since all, or almost all, of the witnesses reside in California, Kay and his counsel believe that the entire proceeding (including Kay's testimony, if necessary) should be held in Los Angeles. Any witnesses who do not reside in California will be called to testify in Washington, D.C. Since Kay is a resident of California and most, if not all, of the proceeding will take place in California, Kay's testimony, if necessary, should be taken in California. After further review of the status of discovery and pleadings received to date, Kay

³ The Bureau has advised that it will now be suggesting September dates. Kay submits that the dates previously discussed are optimistic themselves, given the breadth of necessary discovery and the expected testimony by witnesses to such discovery.

also believes that the hearing in Los Angeles will exceed two weeks and may take approximately four weeks.

VI. Timing

As noted above, Kay believes that discovery could be completed in approximately four to five months from the date the discovery reconvenes. Assuming this schedule is acceptable, the Bureau would produce its exhibits and a final witness list within thirty (30) days after the close of discovery. Kay would produce his exhibits and a final witness list within sixty (60) days after the close of discovery. Consequently, if the discovery cutoff is set for September 1, 1997, the Bureau would identify its witnesses and produce its exhibits no later than October 1, 1997 and Kay would identify his witnesses and produce his exhibits no later than November 1, 1997. Kay suggests that both parties should be permitted to take limited discovery following the production of exhibits and the identification of witnesses to take into account any previously unknown or unidentified documents, exhibits and/or witnesses. Furthermore, if the Presiding Officer would like the parties to submit trial briefs, the briefs could be submitted in late November, 1997. Consequently, under the time-frame outlined above, the hearing could commence in California any time after December 1, 1997, which commencement date is consistent with the parties earlier discussions.

Respectfully submitted,

JAMES A. KAY, JR.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Status Report was hand-delivered on this 18th day of March, 1997 to the following:

The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Suite 220
Washington, D.C. 20554

Gary P. Schonman, Esquire
Federal Communications Commission
Hearing Branch
Mass Media Bureau
Suite 7212
2025 M Street, N.W.
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and sent via first-class mail, postage prepaid on this 18th day of March, 1997 to:

W. Riley Hollingsworth
Deputy Associate Bureau Chief
Wireless Telecommunications Bureau
1270 Fairfield Road
Gettysburg, Pennsylvania 17325-7245.



Scott A. Fenske

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